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IN THE

Supreme Court of the United States

October Term, 1969

NO. 1181

LESTER G. MADDOX, *et al.*,
Appellants,

versus

BEN W. FORTSON, JR., *et al.*,
Appellees.

On Appeal from the Supreme Court of Georgia

Motion to Dismiss or Affirm on Behalf of Appellees Ben W. Fortson, Jr., Secretary of State of Georgia, Arthur K. Bolton, Attorney General of Georgia, and The State Election Board of Georgia

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February, 1970

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IN THE

Supreme Court of the United States

October Term, 1969

NO. 1181

ESTHER G. MADDOX, *et al.*,

Appellants,

versus

BEN W. FORTSON, JR., *et al.*,

Appellees.

On Appeal from the Supreme Court of Georgia

Motion to Dismiss or Affirm on Behalf of Appellees Ben W. Fortson, Jr., Secretary of State of Georgia, Arthur K. Bolton, Attorney General of Georgia, and The State Election Board of Georgia

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Appellees Ben W. Fortson, Jr., Secretary of State of Georgia, and Chairman of the State Election Board, Arthur K. Bolton, Attorney General of Georgia, and the State Election Board of Georgia respectfully move the Court to dismiss the appeal herein, or, in the alternative, to affirm the judgment of the Supreme Court of Georgia, on the grounds that the decision below is clearly correct and the question is so insubstantial as not to warrant further argument.

QUESTION PRESENTED

The ultimate question presented by this case is whether or not the people of a State, by their Constitution, can provide in advance that their Governor shall not be eligible to succeed himself as chief executive officer.

STATEMENT

Appellant Lester G. Maddox became Governor of Georgia in 1967 following this Court's decision in *Fortson v. Morris*, 385 U.S. 231 (1966). He desires to run for re-election as Governor to succeed himself this year.

His desire, and that of the seven other appellants, is frustrated by the State Constitution which provides that a Governor is not eligible to succeed himself as Governor for at least four years (Ga. Const. Art. V, § 1, ¶ 1; Ga. Code Ann. § 2-3001; appellants' appendix C, p. 1-c).

The trial court held the limitation to be a "reasonable qualification" (appellants' appendix B, p. 10-b), and the Supreme Court of Georgia affirmed (appellants' appendix A).

ARGUMENT

We concur with appellants that an expedited final decision in this case is desirable. If Governor Maddox is entitled to run for re-election, it is only fair that he and the voters of Georgia know it in time to act thereon. However, we emphasize the "*if*," and respectfully submit that the granting of the motion to dismiss or affirm would be both timely and proper.

Although appellants have adopted a popular lexicon, including "invidious discrimination" and "compelling state interest," and although the subject matter of this

case has intellectual appeal, we respectfully submit that when all is said and done, this Court will conclude that the decisions below are clearly correct and that no question of substance has in fact been raised.

Let us first examine the basic issue. Appellants do not contend that all qualifications for State office are invalid under the federal Constitution (Appellants' Motion to Advance and Jurisdictional Statement, pp. 20, 22). The decisions of this Court do not hold that all qualifications for State office are invalid. In *Williams v. Rhodes*, 393 U.S. 23, 35 (1968), the Court upheld State qualifications for office, requiring Ohio to permit the Independent Party's presidential electors to remain on the ballot, subject to ". . . the law relating to the *qualification* and functions of electors." (Italics added.) In *Turner v. Fouche*, ___ U.S. ___, 38 U.S.L.W. 4090, 4094 (Jan. 19, 1970), the Court only held "invidiously discriminatory disqualifications" to be invalid. See also *Kramer v. Union Free School District*, 395 U.S. 621, 626 (1969), where the reference was "unjustified discrimination."

Hence, the Constitution does not invalidate all qualifications for holding State office. Some qualifications are therefore valid; *e.g.*, age, residence, previous criminal record. Cf. *Lassiter v. Northampton County Bd. of Elections*, 360 U.S. 45, 50-51 (1959).

As to each valid qualification for holding office, there is some restriction of the right to be a candidate and some impairment of the voters' choices. Such restriction or impairment is not invalid if the qualification for the office is valid.

CONCLUSION

It is respectfully submitted that the decision below is clearly correct, that the question is so unsubstantial as not to warrant further argument, and that the public interest in an expedited final decision would best be served by the dismissal of this appeal or, alternatively, the affirmance of the judgment entered in this case by the Supreme Court of Georgia.

Respectfully submitted,

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A PROOF OF SERVICE

I, Harold N. Hill, Jr., Executive Assistant Attorney General of the State of Georgia, hereby certify that I am of counsel for the Appellees Ben W. Fortson, Jr., Arthur K. Bolton, and the State Election Board of Georgia, that I am a member of the Bar of the Supreme Court of the United States, and that on February __, 1970, I served the within and foregoing Motion to Dismiss or Affirm upon the Appellants, by mailing true copies thereof to their counsel of record, Tully M. Bond, Jr., Esquire, 317 Walnut Street, Macon, Georgia 31201, his post office address, first class postage prepaid.

I further certify that all parties required to be served have been served.

This ____ day of February, 1970.

HAROLD N. HILL, JR.
Executive Assistant Attorney General
Of Counsel